



# Redeemable land sales: from customary practices to their re-framing under state law

*An ethno-historical perspective*

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## The redeemable sale : a transversal institution

➔ Recurrent expressions and a wide diffusion along time and space

Vocabulary:

- fiducia cum creditore, réméré (from *redimere*: to buy back, to redeem), venta con carta de gracia, pacto de retroventa, redeemable sale, pawning, pledge, "déposer les problèmes" (winye), "living sales" (Merina, Madagascar), inter-temporal borrowing

History:

- Emar (14<sup>th</sup> Century B.D.), Classic Greece, Egypt 4<sup>th</sup> C., Code Justinien (6<sup>th</sup> C.), Medieval Europe (Piedmont, Rhône Valley, Spain), China and Vietnam (7<sup>th</sup>-19<sup>th</sup> C.), Spanish colonies in America and Asia (18<sup>th</sup>-19<sup>th</sup> C.), Algeria (19<sup>th</sup> C.), Sub-Saharan Africa (Kenya, Senegal, Burkina Faso, 20<sup>th</sup> C.), Madagascar...

What is it?

- the gaging of operational rights (not the administrative ones!)  
keeping the right of redemption:
  - ➔ the always open possibility to dis-engage them in re-embursing  
the exact amount of money against which these rights have been gaged
  - ➔ inter-temporal borrowing

## The redeemable sale : a transversal institution

### ➔ Structure of the presentation:

“Keeping while selling”: the logics of redeemable sale and the development of a market economy

The exposure to a wider market capitalist economy: the logics of codification and the shiftings of significance in redeemable sales

Property rights reforms and strategic distortions of redeemable sales: usurpations, dispossessions, conflicts



## Keeping while selling: the logics of redeemable sale and the development of a capitalist economy

### ➔ Redeemable sales in traditional systems

- Intricated systems: societies organized around kinship, with no place, or a discriminated one for foreigners; also found in attached systems (ie: societies that keep the land while giving it through tutorat institution)
- Distress transactions: a situation where the owner of rights sell them in order to save his life or his honor, while the buyer maintain the right of redemption of the seller (through generations)
  - ➔ because operational rights are life rights of a higher nature and should not be confiscated forever
  - ➔ within intricated systems these kind of sales tend to benefit people who were disadvantaged in former inheritance processes (likewise sales with preemptive rights)
- Inter-connaissance societies: people are linked by multiplex relationships
  - ➔ *“if I did not [restitute the land] I would cause irreparable rupture between the two families: ties of reciprocity and gift exchanges would be broken [...] wifes would be divorced...”* (D. Galvan, 1993: 28, Serer, Senegal)
- What was sold? : children, fruit trees, fishing dams, gardens, fields, houses...



## Keeping while selling: the logics of redeemable sale and the development of a capitalist economy

- ➔ The exposure to a wider market economy and the combination of patrimonial and market logics

The european situations (15<sup>th</sup>-16<sup>th</sup> centuries): the combinaison of patrimonial and integrative strategies within the extended market networks

- The Genoa Republic and Mâconnais: redeemable sales among siblings provide a resource which allows some members of the lineage to invest in trade enterprises

➔ to avoid the fractioning of the patrimony (which would benefit outsiders)

Indigenous societies of the hispanic Empire (Philippines, Mexico, 18<sup>th</sup>-19<sup>th</sup> C.): the creation of lasting bonds between peasants and trading agents (themselves member of the community)

- The peasant (seller) installed as a farmer on the land acquired



## Keeping while selling: the logics of redeemable sale and the development of a capitalist economy

➔ A set of questions raised by the growing inclusion of redeemable sales within the capitalist economy framework

The duration of the redemption rights considering generational changes, the risk of forgetting the amount of money pledged, the eventual investments on the plot... or the resale of the rights to others (re-sale of the right of redemption by the original owner, chains of redeemable sales: Snyder, 1977)

- The need for legal standardization when transactions involve parties from different social groups and/or asymmetrical social status (farmer/trader; native/foreigner)

The risks of transformation in the meaning of redeemable sales in situations of legal changes (content of the rights/changes in authorities)

- Myanmar example by S. Huard, 2014





## The exposure to a wider market economy: logics of juridical codification and shiftings of significance in redeemable sales

➔ Circumventing legal/ideological prohibitions related to lending with interest in monetarized economies

Christian canon law, islamic law, chinese law...

- valorization of the capital engaged via production or renting of the land acquired

Association of written and registered contracts with the expansion phases of trade and capitalist markets

- corridors of trade in southern Europe 15<sup>th</sup>-16<sup>th</sup> C. (Genoa Republic, Mâconnais, Rhône Valley): formation of trading companies
- spanish empire possessions 18<sup>th</sup>-19<sup>th</sup> C.: financing of textile fibers productions, dyes, sugar, alcohol, tobacco
- links to be explored with the development of african colonial markets

Contexts where the legal guarantee mechanisms for credit operations (mortgaging) are ineffective and/or too costly



## The exposure to a wider market economy: logics of juridical codification and shiftings of significance in redeemable sales

➔ A proven role of redeemable sales in the transformation of land tenure structures

The redistribution of property rights benefits actors who are best integrated within the monetary exchange networks

- support for the integration of mestizo/creole traders within the indigenous communities (Philippines, Latin America)
- with the abolition of the dissociation of legal regimes between natives and europeans, an increasingly frequent recourse to written and registered contracts
- introduction of deadlines in the duration of contracts (“*réméré à terme*”, or “*fixed-term redeemable sale*”, as a new feature in 17<sup>th</sup> C. France)

The gradual dis-embeddness of market relations in which redeemable sales were originally inserted

- development of markets for the rights of redemption in contexts of increasing land value
- an incentive to establish more restrictive terms in the exercise of the redemption right (deadlines, types of payment)





## Property rights reforms and strategic distortions of redeemable sales: usurpations, dispossessions, conflicts

➔ Legal changes in the content of property rights and the identity of regulating authorities, and transformation of redeemable sales

Liberal and neoliberal inspired land reforms:

- distribution of individual property titles, abolition of common use rights, designation of state/municipal authorities to regulate the transfers of rights
- dis-embedding of property relations, both in the exercise of access rights (suppression of the local social duties associated with them), and in the regulation of market land transfers and land conflicts (assumed by the state or by juridical figures autonomous from the local society)

A double field of opportunities:

- the beneficiaries of a redeemable sale can take advantage of the titling program to transform the inter-temporal borrowing in definitive possession
- the changes in the effective terms and meanings of the contracts, when the rights transferred are no longer regulated by community authorities, enforcing the life rights of its members, but by legal/state agents only interested by administrative rights



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